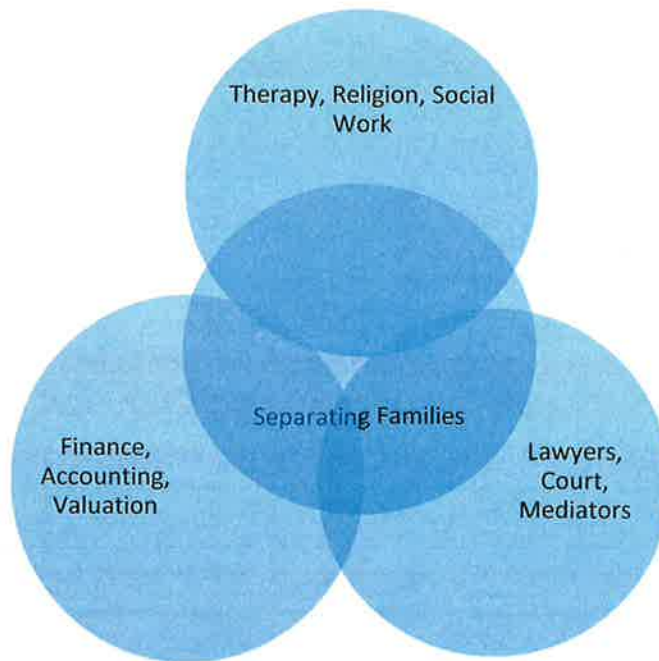


Fourth Quarter, 2014

SENSIBLE SEPARATION



Sensible Separation is an interdisciplinary newsletter for professionals assisting families with divorce or separation. If you would like to contribute an article, please submit to gkincaid@hrkklaw.com. For more information about divorce mediation, please visit www.sensibleseparation.com. Another opportunity to share helpful thoughts or insights about our work exists on the *Sensible Separation* FACEBOOK page, which is located at www.facebook.com/sensibleseparation.com.

Isolina Ricci, Ph.D.

Dr. Ricci is a leading expert in child custody. She offers her thoughts on *Move Away* cases and the stress it imposes on children.

Professor Linda Elrod.

Professor Elrod offers an excellent summary of the law of *Move Away* cases in Kansas.

Greg Kincaid, attorney and mediator.

In this short note, I set forth three areas of concern when preparing child support work sheets for *Move Away* cases.

This issue of *Sensible Separation* looks closely at Move-Away cases. I reached out to two nationally recognized leaders to help us with this difficult topic. Many thanks to Isolina Ricci and Professor Linda Elrod for their contribution. I finish the issue with a few brief thoughts on child support calculations for Move Away cases.

A Note About Moving Away and Toxic Stress¹

By Isolina Ricci, Ph.D.

When a child has two involved parents, a move away can change everyday life for each member of the family. Usually, the children will see far less of one parent on a daily or weekly basis during the school year, while the “school year” parent will be both mother and father to the children around the clock. These are major life changes. How can parents help their children manage their level of the anxiety and stress generated by all these changes? Can parents manage their own stress and not overtax the child’s natural capacity to bounce back?

Separation and divorce can generate toxic stress or what researchers now call an ACE, or “adverse childhood experience”. “What will happen to me?” Say some children. “Did I do something wrong?” “My Dad (or Mom) left. I’m not important enough.” “I’m scared”. “If they really love me, why are they doing this?” “I don’t have my home anymore. Where do I belong?” All ages of children are affected including teens trying to ride the seesaw of their brain’s stormy emotional development stage.

Regardless of a parent’s verbal assurances, as the changes pile up, so does a child’s stress. Then, if there is a move away, this second blow can sometimes be even more stressful than the divorce. The ground beneath their feet can roll and shake. There may be more imposed changes in routines, schedules, climates, possibly schools, friendships, relatives, neighborhoods, and homes. Despite a child’s natural resiliency and the magic of today’s electronic communications, a child still needs a parent’s strong physical presence and parenting skill to manage the heightened stress generated by divorce and the move.

The Up and Downside of Stress. Stress, fear, and anxiety are all normal experiences. The “good” stress of excitement, challenges, and joy are energizing. But, too much anxious or intense stress can be dangerous. We have heard about how chronic stress can weaken an adult’s immune system. Now, research shows that chronic or toxic stress places children, most especially the youngest

¹ Isolina Ricci © 2014

ones, at risk for negatively altered brain functions, immune systems, and hormonal functions.² Children's capacity for managing these intense experiences is limited and their internal systems cannot process them safely. Instead, their brains can be altered thereby limiting their future emotional responses, impulse control, and attention. Toxic stress can even modify how a child's DNA is utilized.³ As adults, they are at greater risk for a series of health problems and other limitations.

Even more worrisome is that toxic stress is not limited to the obvious dangerous or abusive circumstances but can also be found in everyday behavior. For children of divorce, there are daily opportunities for extreme stress. Examples are many: their parents' anxiety, stress, and diminished parenting before and during the divorce; a parent's emotional issues, the move away with its myriad changes, intense hostility or disrespectful behavior by one or both parents, being in the "miserable middle" of parents' arguments or resentments, carrying messages between parents, the worry or the actual loss of frequent contact with a beloved parent, trying to cope with different rules at mom's than at dad's, loss of friends, extended family, a home, school, or neighborhood, and countless more. The American Academy of Pediatrics is clear: a child's brain is exquisitely interconnected with his or her environment and chronic and toxic stress is to be avoided. So what can parents and professionals do? First, take heart. There is a way through this. Here are a few helpful tips.

Quick Tips for Managing Toxic Stress and Easing the Transition⁴

- **Construct a parenting time schedule that is tailored to your child's temperament, level of development and physical constitution or sturdiness (TLC).** For the youngest children, don't ask them to travel to you, go to them. Set up a generous travel fund including emergency travel.
- **Put each child's needs first.** Be even more aware that with change, each child will need different things from you. One may just want the car to explore, while another needs to stay close and be reassured more. Show by your actions, not just words, that they are your priority, that you will always protect and care for them, and that things will work out with time. If you are the parent separated from the children, spend every minute with the

² Some of the dangerous and extremely stressful circumstances are unsafe, incompetent, or neglectful parenting, serious mental or emotional disorders, domestic violence (whether or not it was witnessed by a child), stalking, threats, physical and sexual abuse, criminal activity, drug or alcohol abuse, intense parental conflict, and attempts to alienate a child from the other parent.

³ An extensive list of universities, government agencies, states, research is now focused on ACEs. See more at: <http://www.childtrends.org/glass-half-full-the-bright-side-of-aces-research/#sthash.wXrUnDNq.dpuf>. Also see, the American Academy of Pediatrics. <http://www.aap.org/en-us/advocacy-and-policy/aap-health-initiative>.

⁴ For more tips, go to www.momshousedadhouse.com, click on "articles and parenting tips" on the left.

children when you are together, especially that first year apart. Don't leave them with sitters or share time with a new love interest. Make trips to see the children your priority. Drop everything when there is an emergency to be at your child's side. Stay connected.

- **Plan Ahead: Get an assessment from a trained professional for both you and your children before the move.** The impact of the move on everyone can be significant. What one person can manage or even welcome, another one cannot. Try to repeat the assessment a year later to capture unforeseen effects.
- **Face the fact that this will likely be a grieving process for the children and the parent without the children.** It can be heart wrenching and long lasting. There can be resentment, depression, and anger, not just sadness. Parents, talk together about how to ease the transition process for the children and each of you.
- **If you are the 24/7 residential parent, plan for the single parenthood experience.** It's essential that you have more relaxed one-on-one time and fun with the children. Take outings, work on projects together. Keep things calm. Avoid violent movies or TV. Be especially affectionate. Discipline may become more of a challenge as a child may be acting out in response to his or her stress. Ask the other parent to back you up with discipline.
- **Review each day with the children.** Have a family ritual where you hear about the day together or at least a private moment with each child. Don't be rushed. Encourage and applaud when a child managed or understood something. With issues, emphasize that tomorrow is another day to start fresh and that things often take time.
- **Keep or develop a daily structure and be consistent-even when you are the long-distance parent.** Structure is a key stress reducer. It feels predictable and safe. Have house and safety rules and follow through. Emphasize that you are a family, that you look out for one another, and that everyone does their part. This can offer children a sense of ownership, purpose and control.
- **Manage your own stress, anger, depression, or fear so that your children feel safe dealing with their own sadness and frustration.** Use a counselor to help you monitor and manage your stress and any challenges you and the children may have.
- **Support the children's relationship with the other parent.** Always speak about the other parent with respect and with a smile. Have his or her photo in their room. Your support helps their transition. When a decision or issue comes up, take the lead, for example, "I'll ask Dad what he thinks." Take a tip from military families: Use Skype and speakerphones for full family talks with both parents and all the children. Send a weekly update to the other parent-even when he or she is in frequent contact with the children.
- **Be a parent team. Cooperate and communicate.** Hostility and bitterness are major causes of toxic stress for everyone. Be courteous, calm, and diplomatic (CCD). Keep your arguments with the other parent out of earshot and sight of the children. If teamwork is a problem, try using a special parent-business set of guidelines to regain composure and develop agreements⁵ It's not easy to be "CCD", but it's the key to a better future.

⁵ A special "parent business" type of relationship is explained in Chapters 4, 5 and communications in Chapter 6 of *The CoParenting Toolkit*, by Isolina Ricci

- **Stay updated!** Use electronics. Both parents can have school and activity calendars and are on email lists. If a child has a cell phone, use it frequently. Send photos, videos, texts, and notes back and forth. Explore on-line communication sites. Resident parent---try to be in touch with your school age-children several times a day. Be creative.

For more notes on “Move Aways”, check the websites below.

Isolina Ricci, PhD., is the author of the *Mom’s House, Dad’s House* books including *Mom’s House, Dad’s House for KIDS*, and the award winning *The CoParenting Toolkit*. She is a licensed Marriage and Family Therapist, educator, and consultant to attorneys and other professionals.

www.coparentingtoday.com www.momshousedadshouse.com

Relocation: Trying to Move on but is it in the Best Interests of the Child?

*Linda D. Elrod, Richard S. Righter Distinguished Professor of Law and Director,
Children and Family Law Center, Washburn University School of Law

Relocation cases, when one parent attempts to move a child either out of state or a significant distance from the child’s other parent, are among the most difficult for courts to decide because they are “no win” situations. The status quo changes and the child will have to establish a new type of contact with at least one parent. The proposed move can generate conflict where there had been none before or can exacerbate a bad situation when the parties are already involved in a high conflict situation.

If the move is at the time of the initial divorce action, the court decides parenting time and residency based on the best interests of the child. Each parent would put on evidence as to why residency with the parent in Kansas or the moving parent would be best for this particular child. The most common scenario, however, occurs when the primary residential custodian of a child announces an intent to move to a new location after an award has been made of custody, residency or parenting time. Kansas statute, K.S.A. 23-3222, provides that a parent entitled to legal custody

or residency of or parenting time with a child shall give written notice by restricted mail, to the other parent not less than 30 days prior to changing the child's residence (even within the state) or taking the child from Kansas for more than ninety days. The change of the residence or the removal **may** be considered a material change of circumstances which justifies modification of a prior order. In Kansas, the party seeking to change custody has the burden of proving that the relocation is a change of circumstances.

If a hearing is held, relocation cases are intensely fact driven because each parent's reasons for relocation and relationships with the child differ. Kansas does not have a presumption for or against relocation but the statute provides that the court shall consider all factors the court deems appropriate including: The effect of the move on the best interests of the child and on any party having rights and the increased cost the move will impose. Most states have a far more expansive list of factors.

If the relocating parent has a good faith reason for the move, such as to be closer to family who can help with child care, a new job paying substantially more money or to stay with a new spouse, and shows that the child's quality of life will be improved, then the nonmoving parent will need to show that the move is not in the child's best interests. Judges look at the nature, quality, extent of involvement, and duration of the children's relationship with each parent. Courts are more likely to allow the primary residential parent to move if there is a good faith reason for the move and the nonmoving parent is not actively involved in the child's daily life or if the move is not very far away. Parents must be prepared to show how the move will impact the child's physical, educational, and emotional development considering the child's age, developmental stage, and needs. Other relevant factors include the quality of the child's relationship with peers and other relatives; strength of ties to the community; the frequency of the contact between the child and each parent; the child's preference; existence of educational advantages; the distance between parents' homes and the cost of alternative arrangements. Mental health experts may be involved. In one Kansas case, even though both parents were described as good parents, the trial court followed the psychologist's recommendation to change custody to the father so the children could remain in Wichita mainly based on "the picture of proven stability" for the children with their schools, friends, and relatives. *In re Marriage of Bradley*, 899 P.2d 471 (Kan. 1995).

A parent who has tried to thwart the other parent's relationship with the child, as evidenced by a pattern of conduct to interfere with access, may not be allowed to move. Likewise, the court will examine the integrity of the nonmoving parent's motives for opposing the move. A parent who objects to the child's relocation to secure a financial advantage, to exercise a measure of control over an ex-spouse as in a domestic violence situation, or to carry on a fight may not be able to convince the court the child should remain. The mere fact that the nonmoving parent's access may be more difficult will not keep most courts from allowing the move. The moving parent should be prepared to show that there are realistic opportunities for adequate parenting time to allow the nonmoving parent and the child to maintain a close relationship and that the parties can afford the costs. In addition the moving parent must be willing to comply with the new arrangements. With

the advent of modern technology, there are many more ways for families to stay connected through the internet and cell phones with video.

Moving a child to another location should not be taken lightly. A parent wishing to move should do his or her homework to show how the child will benefit. Most studies indicate that as a general rule a child benefits from having a quality relationship with both parents.

Long Distant Parenting and Child Support,

By Greg Kincaid.

This is a very brief note on the impact of long-distance visitation costs on child support calculations.

There are three common adjustments that should be considered when parents do not live in close proximity to each other: (a) long-distance visitation costs (transportation expenses); (b) cost of living adjustments; and (c) parenting time adjustments. The Kansas Supreme Court Child Support Guidelines address each of these issues and they are further amplified in important ways by our case law.

A. Long-Distance Parenting Time Costs.

When there is long distance parenting, the increased transportation costs must be equitably allocated between the parents. Our *Kan. Child Support Guidelines, Kan Sup. Ct. Admin Order no. 128* (hereinafter the “Guidelines”), provide:

IV.E.1. Long-Distance Parenting Time Costs (Line E.1)

Any substantial and reasonable long-distance transportation/communication costs directly associated with parenting time shall be considered by the court.

While court must consider long distance visitation costs, they can *consider* and thereafter refuse to make any adjustment at all. See, *In the Matter of the Paternity of A.L.*, 316 P.3d 172, 2014 Kan. App. Unpub. LEXIS 27.

There are four factors that must be weighed in determining whether to make an adjustment

“(1) [w]hich party moved away, thereby causing the expense; (2) the reasonableness of the expenditure; (3) the amount of the expense; and (4) the other relevant factors, which relate to whether the parties should be given a credit or share in the expenses.” *In re Marriage of McPheter*, 15 Kan. App. 2d 47,50, 803 P.2d 207 (1990).

A brief review of the case law suggests that the first factor is weighed heavily. For obvious reasons, it is inequitable for one parent to move away--shifting the parenting burdens on the remaining parent, often times so the parent moving away can improve their own financial situation--and then simultaneously expect the remaining parent to shoulder part of the cost of the move.

Assuming the move had no selfish or ulterior motivations, the Court is left trying to simply allocate the burden. There is no guidance on the practical mechanics of this process and the trial courts have not surprisingly been repeatedly challenged by the task.

For example, while it might be tempting to apply some type of formula, as for example is done with out-of-pocket medical expenses, the Court of Appeals was unwilling to adopt this approach. See, *In the Matter of the Parentage of Joshua F. Brown*, 39 Kan. App. 2d 26, 176 P.3d 242 (2008). It's not clear from this case, however, whether the court out-right rejects the use of the formula or just reversed because the trial court seemed to think it was required to use a formula (and did not apply its own formula correctly).

The trial court must also be careful not to simply craft an equitable arrangement that is inconsistent with an agreed upon parenting plan unless making specific finding that it is in the children's best interest to do so. See, *In the Matter of the Marriage of Watson*, 229 P.3d 420, 2010 Kan. App. Unpub. LEXIS 323.

B. Interstate Pay Differential.

There are wide variances in the cost of living across the country and, even more so, across the borders of our country. The Guidelines provide:

III.B.9. Interstate Pay Differential

The cost of living may vary among states. The “Average Annual Pay by State and Industry” as reported by the United States Department of Labor Statistics can be used to compute a value for the interstate pay differential... There is a rebuttable presumption that the adjusted pay amount reflects the variance in average pay. The application of the Interstate Pay Differential is discretionary. The income of the parties will not be subject to an interstate pay differential if both parties live in Kansas or reside in the same metropolitan statistical area (MSA).

The Guidelines permit the courts to use a quotient to convert the value of dollars earned elsewhere to the value of dollars earned in Kansas. The Court may (but is not required) to use the Interstate pay differential if the parties do not both live in the State of Kansas. Notice, however, that if one

parent lives in Missouri, the guidelines do allow the use of the interstate pay differential if both parents reside in the same standard statistical area, e.g. KCMO. While the Interstate Pay Differential helps to put two parents living in two different states on a level playing field, it does not appear to take into account the more frequent situation for move away cases: one parent living in an urban area of Kansas and another parent living in a rural area. The level of wages and the cost of living may vary just as significantly intrastate as they do interstate. Presumably these differences could arguably also be accounted for with an Overall Financial Conditions of the Parties (Line E.6) adjustment.

Another consideration not directly considered by the Guidelines would be where a family is separated not by states, but by countries. The Guidelines do not specifically address the question, but the concept would seem to be equally applicable when entirely different countries are involved, potentially with vastly different salary structures, tax provisions, and costs of living. In one very recent unpublished case, the Court of Appeals did not reject the trial court's consideration of the cost of living adjustment where the father had moved to Toronto. *In re the Marriage of McHenry*, 320 P3d 449, 2014 Kan. App. Unpub. LEXIS 169.

C. Parenting Time Adjustments.

In general, the child support calculations are impacted by the quantity of time the non-custodial parent spends with the children above or below some average or norm. These issues are very complicated when the parents live close together. They grow even more complicated when long-distance parenting is involved. My reading of the Guidelines is that if the parent without physical custody (that lives outside of Kansas) exercises more than 14 consecutive days of access, they are entitled to up to 50% reduction in child support for such period. Strangely, the resident parent is not entitled to any credit (adjustment upwards) unless the non-custodial parent does not exercise the time set forth in the parenting plan.

The Guidelines provide:

In situations where a child spends fourteen (14) or more consecutive days with the parent not having primary residency, the support amount of the parent not having primary residency from Line F.5 (calculated without a Parenting Time adjustment) may be proportionately reduced by up to 50% of the monthly support from Line F.5. The court may [also] make an adjustment based on the historical non-exercise of parenting time as set forth in the parenting plan.

Of course whether or not a parent is exercising the time set forth in the parenting plan is a matter of fact. See, also, *In re Marriage of Katona*, 322 P. 3d. 1026, 2014 Kan. App. Unpub LEXIS 281.